

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

SIERRA ROBINSON and MARY A. ROBINSON,

Plaintiffs,

-vs-

MEMORANDUM &
ORDER

ROCHESTER CITY SCHOOL DISTRICT and
PRINCE CASTRO, In His Individual and
Official Capacities,

06-CV-6157-CJS

Defendants.

Siragusa, J. This matter is before the Court on Defendants' motion (Docket No. 45) to dismiss pursuant to Federal Rule of Civil Procedure 41(b)¹ for Plaintiffs' failure to prosecute the action. That rule provides in pertinent part as follows:

If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.

Fed. R. Civ. P. 41(b).

The motion was filed on April 22, 2010, and the Court issued a motion scheduling order setting May 21, 2010, for the Plaintiffs' response, and an oral argument date of July 29, 2010. Plaintiffs' counsel has responded to the motion in an attorney's declaration. (Docket No. 47.) In his response, counsel does not oppose the motion and sets forth the

¹Defendants' Notice of Motion erroneously cites Rule 42, which pertains to consolidation and separate trial. The Court presumes this is merely a typographical error and that defense counsel meant Rule 41, which pertains to dismissal of actions.

details of his attempts to contact Plaintiffs and obtain their cooperation for his representation in this matter. Counsel's declaration candidly concedes the merits of Defendants' motion and provides further evidence to support a motion to dismiss. Accordingly, the Court grants the application (Docket No. 45). Thus, it is hereby,

ORDERED, that Defendants' motion to dismiss (Docket No. 45) is granted pursuant to Federal Rule of Civil Procedure 41(b) as a result of Plaintiffs' failure to prosecute; and it is further

ORDERED, that the Court's motion scheduling order (Docket No. 46) is hereby modified to vacate the oral argument date; and it is further

ORDERED, that the Clerk enter judgment for Defendants and close this case.

IT IS SO ORDERED.

Dated: June 7, 2010
Rochester, New York

ENTER:

/s/ Charles J. Siragusa
CHARLES J. SIRAGUSA
United States District Judge